DOWER—PARTITION SALE—WIFE OF A TENANT IN COMMON A NECESSARY PARTY.—The petitioner, a purchaser at a partition sale made in pursuance of proceedings between tenants in common, sought to have the sale set aside on the ground that the purchased property was subject to the inchoate right of dower of the wife of one of the parties, since she was not a party to the action. *Dictum,* in absence of statute to the contrary, the wife was a necessary party. *Dure* v. *Sharpe* (Del. 1921) 114 Atl. 207, 208.

An inchoate right of dower may be relinquished by the wife's voluntary act. *In re Acretelli* (D. C. 1909) 173 Fed. 121; see *Royston* v. *Royston* (1857) 21 Ga. 161, 172. Thus an inchoate right of dower may be determined by a petition action in which the wife is joined. *Jordan* v. *Van Epps* (N. Y. 1880) 58 How. Pr. 338; see *Haggerty* v. *Wagner* (1897) 148 Ind. 625, 640, 48 N. E. 366. A partition in severalty, to which the wife is not a party, however, destroys her inchoate right of dower to the undivided interest, but her right attaches to her husband's allotment. See *Wilkinson* v. *Parish* (N. Y. 1832) 3 Paige 653, 658. In most jurisdictions, moreover, a partition not in severalty extinguishes the inchoate right of dower even though the wife is not joined. *Holley* v. *Glover* (1891) 36 S. C. 404, 15 S. E. 605; *Haggerty* v. *Wagner, supra*; *contra, Greiner* v. *Klein* (1873) 28 Mich. 12. Partition, the courts say, is an incident of tenancy in common; therefore the wife if joined could not prevent it, and her presence would thus be nugatory. See *Holley* v. *Glover, supra,* 416 *et seq.*; *Haggerty* v. *Wagner, supra,* 635 *et seq.* The minority view, in accord with the instant case, seems the better since a wife should have the opportunity of urging a partition in severalty to safeguard her dower. Nevertheless, when by statute the proceeds of the sale are set aside for her, the majority rule works no hardship. *Cf. Staser* v. *Gaar, Scott & Co.* (1907) 168 Ind. 131, 79 N. E. 404.

EVIDENCE—DISCOVERED AFTER CONVICTION—IMPEACHING WITNESS.—The defendant S was convicted of bribing one D, mainly through the latter's testimony. To discredit this, S testified that D had tried to extort money from him, but could not prove it. D was subsequently convicted of the charge made by S, who moved for a new trial. *Held,* motion granted; the defendant should not be convicted by the testimony of a witness who had committed the very crime with which he was charged at the trial, though at that time it could not be proved. *United States* v. *Senft* (D. C., E. D., N. Y. 1921) 274 Fed. 629.

It is generally said that a new trial will not be granted on the ground of newly discovered evidence which merely goes to impeach a witness. Graham and Waterman, *New Trials* (2d ed. 1855) 983. Discovery of new evidence is, however, ground for a new trial if it is on a material point and is reasonably certain to cause a different verdict. *Laskofsky* v. *Pocahontas Consolidated Collieries Co.* (1917) 179 App. Div. 861, 167 N. Y. Supp. 226. This is true even if it incidentally impeaches a witness. *Lowry* v. *Indianapolis Traction and Terminal Co.* (Ind. 1920) 126 N. E. 223; *Hess* v. *Sloane* (1900) 47 App. Div. 585, 62 N. Y. Supp. 666. But a new trial may also be granted for evidence that merely impeaches a witness if it is reasonably certain that the evidence will cause a different result in the new trial. *Louisville Bolt and Iron Co.* v. *Hart* (1906) 122 Ky. 731, 92 S. W. 951; see *Apter* v. *Jordan* (1919) 94 Conn. 139, 108 Atl. 548; *contra, Corley* v. *N. Y. & H. R. R. Co.* (1896) 12 App. Div. 409, 42 N. Y. Supp. 274. It would seem as if, notwithstanding the general rule that a new trial will not be granted for impeaching evidence, the courts will grant one if, in their discretion, they think that the new evidence will cause a different result.

EVIDENCE—HEARSAY—DECLARATIONS TO PHYSICIAN.—In an action for procuring a miscarriage, the admission of the testimony of a physician that, in the presence of

a notary, the defendant had declared to him that she had had an abortion performed by a woman, was objected to. On appeal, *held,* the evidence was inadmissible. *State* v. *Gruick* (N. J. L. 1921) 114 Atl. 547.

Hearsay testimony is generally inadmissible because the declarant may not be cross-examined, does not confront the parties, and is not under oath. 2 Wigmore, *Evidence* (3d ed. 1904) § 1362. There are, however, numerous exceptions to this rule. Thus the statements of a person as to present internal suffering are generally admitted since it is only by these statements, and animal utterances or acts, that such facts can be ascertained. *Brown* v. *Mount Holly* (1897) 69 Vt. 364, 38 Atl. 69; see *R. R.* v. *Newell* (1885) 104 Ind. 264, 270, 3 N. E. 836; *Williams* v. *Great Northern Ry.* (1897) 68 Minn. 55, 61, 70 N. W. 860 (admissible only if made to a physician). When made to a physician for treatment, they are admissible even though relating to past feelings. *Barber* v. *Merriam* (Mass. 1865) 11 Allen 322; see *R. R.* v. *Newell, supra,* 271; but see *Davidson* v. *Cornell* (1892) 132 N. Y. 228, 237, 30 N. E. 573. So even though made *post litem motam. Chicago Rys.* v. *Kramer* (C. C. A. 1916) 234 Fed. 245; *Hobson* v. *R. R.* (1913) 180 Ill. App. 84; but *cf. Kath* v. *Wisconsin Central R. R.* (1904) 121 Wis. 503, 99 N. W. 217. This additional exception is made because of the incentive to tell only the truth as to symptoms to a medical attendant. See *Barber* v. *Merriam, supra,* 325. No such reasoning applies to statements as to the cause of an injury, and such hearsay testimony is properly excluded. *Roosa* v. *Boston Loan Co.* (1882) 132 Mass. 439; see *Amys* v. *Barton* [1912] 1 K. B. 40, 44. Similarly where the statements were made solely to enable an expert to testify. *Shaughnessy* v. *Holt* (1908) 236 Ill. 485, 86 N. E. 256; see *Keller* v. *Town of Gilman* (1896) 93 Wis. 9, 11, 66 N. W. 800; but see *R. R.* v. *Newell, supra,* 271. On both these interrelated grounds the decision in the instant case was correct.

Evidence—Parol Evidence Rule—Written Instrument Not Expressing Entire Agreement.—The plaintiff orally agreed to become the adopted daughter of the deceased in consideration of his oral agreement to leave her, upon his death, a certain income. Subsequently, in compliance with the statutes of the state, a written adoption agreement containing no matters other than those technically required by the statutes, was executed. The trial court found that the parties had no intent to make the written adoption agreement include a special income agreement. In an action for breach of the oral agreement, *held,* for the plaintiff. *Strakosch* v. *Connecticut Trust & Safe Deposit Co.* (Conn. 1921) 114 Atl. 660.

In its ultimate aim and effect, the parol evidence rule is a rule of substantive law rather than a rule of evidence. See *Lese* v. *Lamprecht* (1909) 196 N. Y. 32, 36, 89 N. E. 365; 2 Williston, *Contracts* (1920) § 631; 4 Wigmore, Evidence (3d ed. 1904) § 2425 (1). Where parties merge all prior negotiations and agreements in a writing, intending to make that the repository of their final understanding, at law the writing alone will create legal relations. See *Lese* v. *Lamprecht, supra* 36; *Fuchs* v. *Kittredge* (1909) 242 Ill. 88, 89 N. E. 723. If the written instrument was not intended to express the entire agreement, the rule does not exclude parol evidence about matters not covered by the writing. *Horner* v. *Maxwell* (1915) 171 Iowa 660, 153 N. W. 331; *Cooper* v. *Payne* (1906) 186 N. Y. 334, 78 N. E. 1076. Although there seems to be a divergence of opinion concerning the admissibility of parol evidence to prove the incompleteness of the agreement, most courts including even the greater part of those which state their purpose to confine their inquiries to the face of the writing, consider surrounding circumstances and actions. See *Thomas* v. *Scutt* (1891) 127 N. Y. 133, 139 *et seq.,* 27 N. E. 961; *Stone* v. *Spencer* (1920) 79 Okla. 85, 88, 191 Pac. 197;